

## **Dram Shop Liability**

### **Policy Description**

Dram shop liability refers to the civil liability that commercial alcohol providers face for injuries or damages caused by their intoxicated or underage drinking patrons.<sup>22</sup> The analysis of this policy topic in this document is limited to alcohol service to underage people. The most common scenario in legal cases arising from dram shop liability is a licensed retail alcohol outlet furnishing alcohol to an underage person who in turn causes an alcohol-related motor vehicle crash that injures a third party.

In states with dram shop liability, the injured third party may be able to sue the retailer (as well as the underage person who caused the crash) for monetary damages.<sup>23</sup> Liability is relevant only if an injured private citizen files a lawsuit. The state's role is to provide a forum for such a lawsuit; the state does not impose a dram shop-related penalty directly. (This distinguishes dram shop liability from the underage furnishing policy, which results in criminal liability imposed by the state.)

Dram shop liability is closely related to the policy on furnishing alcohol to underage people, but the two topics are distinct. Retailers who furnish alcohol to underage youth may face fines or other punishment imposed by the state as well as dram shop liability lawsuits filed by parties injured in the same incident. Dram shop liability and social host liability (presented elsewhere in this report) are identical, except that the former involves lawsuits filed against commercial alcohol retailers and the latter involves lawsuits filed against non-commercial alcohol providers.

Dram shop liability serves two purposes: (1) it creates a disincentive for retailers to furnish to people under age 21 because of the risk of litigation leading to monetary losses, and (2) it enables parties injured due to an illegal sale to a person under age 21 to gain compensation from those responsible. The underage person causing the injury is the primary and most likely party to be sued. Typically, the retailer is sued through a dram shop claim when the underage person does not have the funds to fully compensate the injured party.

Dram shop liability is established by statute or by a state court through “common law.” Common law is the authority of state courts to establish rules so that an injured person can seek redress against the person or entity that caused injury. Courts can establish these rules only when the state legislature has not enacted its own statutes, in which case the courts must follow the legislative dictates. Thus, dram shop statutes normally take precedence over dram shop common law court decisions.

A common law liability designation signifies that the state allows lawsuits by injured third parties against alcohol retailers for the negligent service or provision of alcohol to a person under age 21. Common law liability assumes several procedural and substantive rules to establish negligence.

Statutory liability designation indicates that the state has a dram shop statute. Statutory provisions can alter the common law rules, restricting an injured party's ability to make

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<sup>22</sup> Dram shops were retail establishments that sold distilled spirits by the “dram,” a liquid measure that equals 1 ounce. This form of liability is also known as “commercial host liability.”

<sup>23</sup> Note that throughout this chapter, “states” refers to the 50 states and the District of Columbia.

successful claims. Statutory limitations can restrict circumstances that can give rise to liability or greatly diminish a plaintiff's chances of prevailing in a dram shop liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions may also apply.

Some states have enacted RBS affirmative defenses. That is, in these states, a defendant may avoid liability if it can establish that its retail establishment implemented an RBS program and was adhering to RBS practices at the time of the service

See the “RBS Training” policy topic for more information.

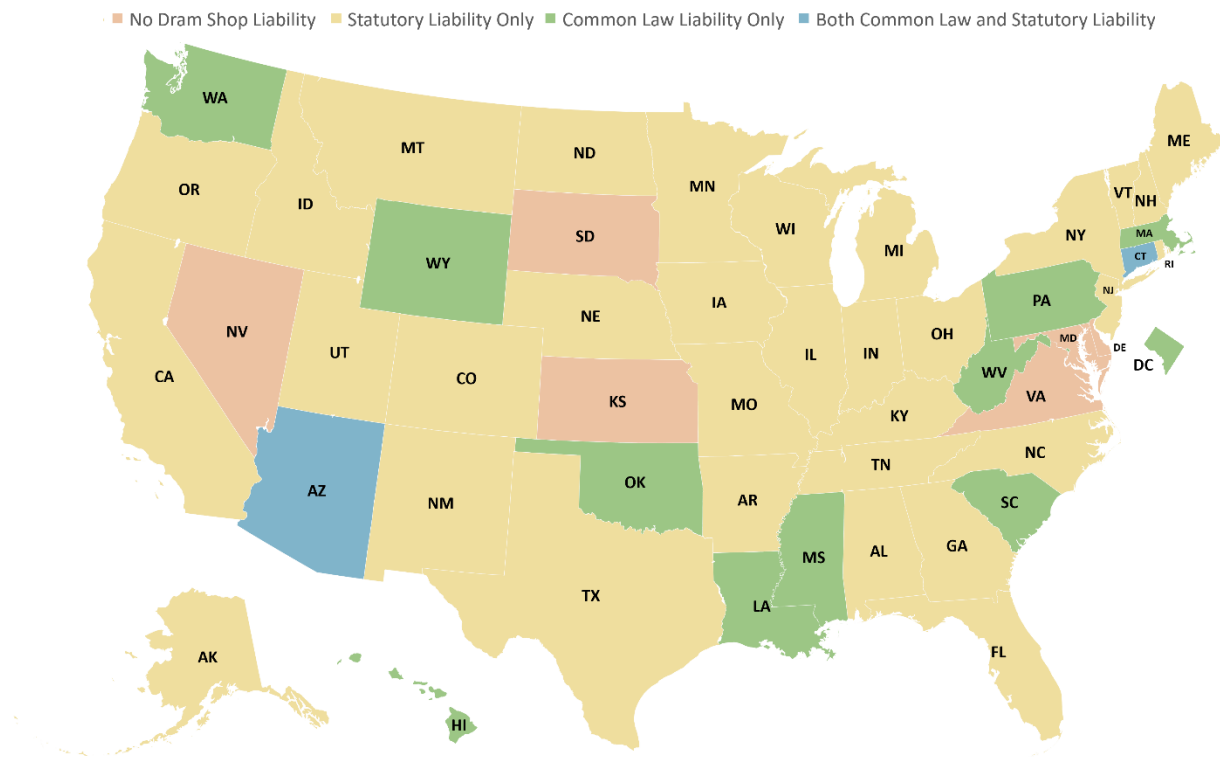
### Status of Dram Shop Liability

As of January 1, 2021, 45 states imposed dram shop liability as a result of statutory or common law or both (Exhibit 2.16). Many states with statutory dram shop liability impose one or more limits on liability, including limits on the damages that may be recovered, limits on who may be sued, and stricter standards for proof of wrongdoing than for usual negligence.

### Trends in Dram Shop Liability for Furnishing Alcohol to a Person Under Age 21

Between 2009–21, the number of states that permit dram shop liability has remained constant.

**Exhibit 2.16: Common Law/Statutory Dram Shop Liability as of January 1, 2021**



### Data Sources and Citations

Legal research for this topic is planned and managed by ICCPUD, chaired by the Assistant Secretary for Mental Health and Substance Use, and managed by the Associate Administrator for Alcohol Prevention and Treatment Policy under contract number 75S20120C00001. For further information, including definitions of the variables for this

- policy, visit [stopalcoholabuse.gov](http://stopalcoholabuse.gov). Blanchette, J. G., Lira, M. C., Heeren, T. C., & Naimi, T. S. (2020). Alcohol policies in U.S. states, 1999–2018. *Journal of Studies on Alcohol and Drugs*, 81(1), 58–67.
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